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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
YEMISI AKINYEMI,

PLAINTIFF,

-against-

Case No.  
07-CV-4048 (CM) (AJP)

MICHAEL CHERTOFF, Secretary, Department of  
Homeland Security,

DEFENDANT.

-----X

DATE: November 6, 2007

TIME: 3:38 p.m.

EXAMINATION BEFORE TRIAL of the  
Defendant, Department of Homeland Security, by  
JOSEPH VINCENT MARTELLA, taken by the  
Plaintiff, pursuant to a Notice and to the  
Federal Rules of Civil Procedure, held at the  
U.S. Attorney's Office, 86 Chambers Street, 3rd  
Floor, New York, New York 10007, before a  
Notary Public of the State of New York.

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A P P E A R A N C E S:

LAW OFFICES OF K.C. OKOLI, P.C.  
Attorney for the Plaintiff  
330 Seventh Avenue  
15th Floor  
New York, New York 10001  
BY: KENECHUKWU CHUDI OKOLI, ESQ.

UNITED STATES ATTORNEY'S OFFICE  
SOUTHERN DISTRICT OF NEW YORK  
Attorney for the Defendant  
86 Chambers Street  
3rd Floor  
New York, New York 10007  
BY: JOHN DALTON CLOPPER, ESQ.  
Assistant United States Attorney

ALSO PRESENT:  
CYNTHIA J. PREE, ESQ., Assistant  
Counsel, U.S. Customs and Border  
Protection, U.S. Department of Homeland  
Security

MR. TALARICO, ESQ.

\* \* \*

1 J.V. MARTELLA  
2 J O S E P H V I N C E N T M A R T E L L A,  
3 called as a witness, having been first  
4 duly sworn by a Notary Public of the  
5 State of New York, was examined and  
6 testified as follows:

7 EXAMINATION BY

8 MR. OKOLI:

9 Q. Please state your name for the  
10 record.

11 A. Joseph Vincent Martella.

12 Q. What is your address?

13 A. 1210 Corbin Street, Elizabeth, New  
14 Jersey 07201.

15 Q. Good afternoon. My name is K. C.  
16 Okoli. I represent Yemisi Akinyemi in this  
17 lawsuit. I will be asking you some questions.

18 What I ask of you, sir, is your  
19 best recollection. If I ask a question and you  
20 don't understand it, please let me know and I  
21 will ask it in such a way that you do  
22 understand. I ask you to be patient. When I  
23 start asking the question I may hesitate a  
24 little bit. Wait for me to finish the question  
25 before you answer even if you know what the

1 J.V. MARTELLA

2 question will be. The reason for this is so we  
3 have a clear question and answer for the  
4 record.

5 If during the course of the  
6 deposition you wish to take a break, either to  
7 consult with counsel or to use the facilities  
8 or for any reason, are you entitled to do that.  
9 This may be the shortest deposition that you  
10 ever attended.

11 Are you currently employed?

12 A. Yes.

13 Q. By whom are you employed?

14 A. United States Customs and Border  
15 Protection.

16 Q. Since when did you become employed  
17 by the -- I will call it CBP for short. Is  
18 that okay?

19 A. Yes.

20 Q. When did you become employed by  
21 CBP?

22 A. September of 2001.

23 Q. What's your current title?

24 A. Officer.

25 Q. Customs and Border Protection

1 J.V. MARTELLA

2 A. I don't remember the exact start  
3 date.

4 Q. Do you remember what year?

5 A. Less than a year.

6 Q. Before that, what did you do?

7 A. I worked for the advanced targeting  
8 unit.

9 Q. What that?

10 A. A.T.U. We target shipments coming  
11 into the country.

12 Q. For inspection?

13 A. Yes.

14 Q. For how long did you do this?

15 A. Approximately two and a half years.

16 Q. In the year 2005, were you with

17 A.T.U.?

18 A. I believe so.

19 Q. Do you belong to a union?

20 A. Yes.

21 Q. For how long have you been a union  
22 member?

23 A. Since my start of employment.

24 Q. And which union do you belong to?

25 A. National Treasury Employees Union.

1 J.V. MARTELLA

2 Q. As a union member, is there  
3 anything that you do for the union on behalf of  
4 the union?

5 A. Currently, I am the executive vice  
6 president of the chapter.

7 Q. When you say the chapter, which  
8 chapter?

9 A. Chapter 161.

10 Q. And where is that located?

11 A. In Newark.

12 Q. Since when did you become the  
13 executive V.P. of Chapter 161?

14 A. Approximately January 2007 it took  
15 affect, I believe.

16 Q. January this year?

17 A. Yes.

18 Q. As part of your duties as an  
19 executive V.P., do you do any union  
20 representational activities with the union for  
21 the CBP? Do you represent union members in  
22 grievances and things like that with the CBP?

23 A. Yes.

24 Q. Since when did you start  
25 representing union members in grievances and

1 J.V. MARTELLA

2 things like that with the CBP?

3 A. When I performed -- when I started  
4 performing as union representative.

5 Q. When was that?

6 A. I have been a union representative  
7 since 2002.

8 Q. Could you just flesh out a little  
9 bit in more detail what your functions as a  
10 union representative are?

11 A. My job is to make sure that  
12 management fulfills its contractual  
13 obligations.

14 Q. Anything else?

15 A. That's pretty much the extent of  
16 it.

17 Q. Since you became a union  
18 representative, could you give us an  
19 approximate number of union members you have  
20 had to represent in either grievances or things  
21 of the sort with the management?

22 A. I couldn't give you that number.

23 Q. Have you represented more or less  
24 than 50 people?

25 A. I would be guessing. No, I don't

J.V. MARTELLA

1

2 know.

3

Q. More than 25?

4

A. As I said, I would be guessing. I

5

do not know an exact number.

6

Q. I take it that you do not keep a

7

record of those that you represented?

8

A. Mentally, no.

9

Q. Is there a document that would

10

indicate who you have represented in any

11

disputes?

12

A. No.

13

Q. Because I am following up from when

14

you said mentally. I am trying to see whether

15

there is anything.

16

A. I don't keep a paper record of the

17

employees that I represent and how many I

18

represent. It is not like a chalkboard that I

19

put up another one. No, I don't do that.

20

Q. Is there anyone within the union

21

that does that?

22

A. Not that I know, no.

23

Q. Do you know who Edward Fox is?

24

A. Yes, I do.

25

Q. Who is Edward Fox?



1 J.V. MARTELLA

2 A. He is the deputy chief officer.

3 Q. Have you ever met with Edward Fox  
4 in the context of your union representational  
5 activities?

6 A. Yes, I have.

7 Q. Did you meet with him in connection  
8 with the Yemisi Akinyemi situation?

9 A. Yes.

10 Q. Other than Yemisi Akinyemi, before  
11 the Yemisi Akinyemi situation, had you met with  
12 Deputy Fox in connection with your union duties  
13 prior to meeting with Deputy Fox in connection  
14 with the present case, that's with the Yemisi  
15 Akinyemi situation? Had you previously met  
16 with him in connection with the representation  
17 of any other union member?

18 A. Not that I remember.

19 Q. Are you in Mr. Fox's direct  
20 reporting line?

21 A. No.

22 Q. Do you know who Yemisi Akinyemi is?

23 A. Yes.

24 Q. How did you come to know her?

25 A. As an employee who needed

1 J.V. MARTELLA

2 Q. Do you know who Lauren Spina is?

3 A. Yes.

4 Q. Do you recall whether you attended  
5 a meeting with her at Lauren Spina's office?

6 A. No, I don't recall that.

7 Q. Tell me what you recall about your  
8 first meeting you attended with her? Do you  
9 recall where that took place?

10 MR. CLOPPER: Objection, vague an  
11 ambiguous. Who is her?

12 Q. The first meeting in which you  
13 represented Ms. Akinyemi, do you recall where  
14 that took place?

15 A. I remember Ms. Akinyemi came to me.  
16 I was working in a cubicle. She said she  
17 needed to write a statement.

18 Q. That she needed to write a  
19 statement?

20 A. That's correct.

21 Q. When you say you were working at  
22 the cubicle --

23 A. I was performing my regular job  
24 duties.

25 Q. That would be at Corbin Street?

1 J.V. MARTELLA

2 A. Yes.

3 Q. When she said she needed to write a  
4 statement, did she explain to you why she  
5 needed to write the statement?

6 A. I believe so, yes.

7 Q. What's your recollection of what  
8 she told you why she needed to write the  
9 statement?

10 A. The exact wording I don't remember,  
11 but the gist of it was that she was at the  
12 airport, her husband went through security, she  
13 went around security, met him at the jetway.  
14 Walked away from the jetway after she said  
15 goodbye to him. He called her on her cell  
16 phone, said he had to give her money. Walked  
17 back to the jetway and gave her money. There  
18 were two CBP officers there. That's what I  
19 recollect.

20 Q. Did you help her in the writing of  
21 the statement? I am just trying to get at  
22 after she said she wanted to write the  
23 statement.

24 What, if anything, did you stay to  
25 her?

1 J.V. MARTELLA

2 A. Well she wrote it and I reviewed  
3 it.

4 Q. And after she wrote it and you  
5 reviewed it, you gave it back to her?

6 A. Yes. She signed it, I believe, and  
7 she gave it to management.

8 Q. You did not accompany her to where  
9 she actually handed in the statement; did you?

10 A. I don't remember.

11 Q. Do you remember when she came to  
12 you if she told you what it was that required  
13 her to write that statement?

14 A. Sorry?

15 Q. When she told that you she wanted  
16 to write a statement, do you recall whether she  
17 told you who it was in management that had  
18 requested her to write the statement?

19 A. No, I don't remember.

20 Q. I believe you had testified that  
21 you don't recall attending a meeting with her  
22 at Ms. Spina's office?

23 A. That's correct.

24 Q. Is it then fair to say that you  
25 were not present at the occasion that she

1 J.V. MARTELLA

2 actually handed the statement over to someone  
3 at management?

4 A. I said I don't remember.

5 Q. So it could have happened but you  
6 just don't remember?

7 MR. CLOPPER: Isn't that what I  
8 don't remember means? Objection, asked  
9 and answered.

10 Q. If you don't remember, I am just  
11 trying to get some clarification of what you  
12 don't remember. I don't remember could be that  
13 something happened but you don't remember it.

14 A. That's pretty much the only meaning  
15 that I don't remember has in my mind.

16 Q. What do you recall of the very  
17 first meeting that you attended with her and  
18 management?

19 A. I believe it was Dominic Callese  
20 with Edward Fox, myself, Ms. Akinyemi and there  
21 was an argument because they weren't fulfilling  
22 their contractual agreement with giving Ms.  
23 Akinyemi rights such as the Calkin rights,  
24 general notice, and Weingarten rights.

25 Q. And you said there was an argument?

1 J.V. MARTELLA

2 A. Not an argument, so to speak. It  
3 was that they weren't following contract and we  
4 walked out of the meeting and it didn't take  
5 place.

6 Q. How did you learn about this  
7 meeting?

8 A. Ms. Akinyemi came to me, I believe.

9 Q. And told you there was a meeting  
10 taking place that you needed to accompany her?

11 A. Yes. I can't represent an employee  
12 if they don't request representation.

13 Q. Do you recall where that meeting  
14 took place?

15 A. In an office. I don't remember  
16 exactly which one.

17 Q. You don't recall whose office it  
18 was now?

19 A. No.

20 Q. But you have this specific  
21 recollection that Mr. Fox was present at that  
22 meeting, the one that you are talking about?

23 A. That's correct.

24 Q. Mr. Callese was there?

25 A. Yes.

1 J.V. MARTELLA

2 Q. You were there and Ms. Akinyemi?

3 A. That's correct.

4 Q. Could you tell us how that meeting  
5 started, as best you can recall it?

6 A. I don't remember exactly how it  
7 started.

8 Q. But at some point there was a  
9 question raised as to Ms. Akinyemi not being  
10 given her Calkin and Weingarten rights.

11 What, if anything, did you do at  
12 that point?

13 A. We called a break, called the union  
14 attorney and the union attorney said  
15 discontinue having the meeting.

16 Q. Do you recall whether Ms. Akinyemi  
17 had been questioned at all before this break  
18 was called?

19 A. Without me present?

20 Q. No, as you were present.

21 A. I don't recall.

22 Q. And to your recollection, was  
23 Edward Fox the highest ranking employee of the  
24 CBP who was present at that meeting?

25 A. I believe so.

1 J.V. MARTELLA

2 Q. And what was your understanding of  
3 why Mr. Fox was present at that meeting?

4 A. Exactly why the employee told me  
5 that she needed representation.

6 Q. Was it your understanding that  
7 Mr. Fox was representing management?

8 A. He is a manager.

9 Q. And after a break was taken at this  
10 meeting, what else happened?

11 A. Excuse me?

12 Q. You said when the issue of  
13 Weingarten rights came up, the meeting was  
14 called off?

15 A. Yes.

16 Q. What happened after in that?

17 A. She went to her regular duties and  
18 I continued on my way.

19 Q. Was there another time that you  
20 attended a meeting with Ms. Akinyemi that had  
21 to do with this same incident?

22 A. A second meeting, yes.

23 Q. Do you recall where that took  
24 place?

25 A. In an office. I don't remember



1 J.V. MARTELLA

2 exactly which one.

3 Q. Do you recall who was present at  
4 that meeting?

5 A. I believe Supervisor Callese an  
6 D.C.O. Fox.

7 Q. Anyone else that you remember?

8 A. Akinyemi and myself.

9 Q. And do you recall what transpired  
10 at that meeting?

11 A. I don't remember exactly what  
12 happened.

13 Q. Based on your experience with the  
14 union, at the time that Ms. Akinyemi was asked  
15 to write a statement concerning this incident,  
16 did you understand that statement to be part of  
17 an investigation?

18 A. No, I had no reason to believe that  
19 it was part of an investigation.

20 Q. The statement that Ms. Akinyemi was  
21 asked to write had to do with what occurred on  
22 a certain day at Newark International Airport;  
23 correct?

24 A. That's correct.

25 Q. And this request that Ms. Akinyemi

1 J.V. MARTELLA

2 provide this statement was made by someone in  
3 management; correct, that's what your  
4 understanding is?

5 A. That's correct.

6 Q. Was it your understanding that  
7 before taking this statement from Ms. Akinyemi  
8 concerning the incident that we are talking  
9 about, that she had to be given Weingarten  
10 rights, Calkin rights and anything of the sort?

11 A. The Weingarten rights, in general,  
12 is when an employee is being in a formal  
13 meeting and they are being questioned or an  
14 inquiry is being made, they are entitled to  
15 those rights which is, management gives the  
16 right to have a union represent present. It is  
17 general notice.

18 Q. Would it make a difference if the  
19 question was in writing instead of the question  
20 being made verbally? Would it make a  
21 difference if the question that the employee  
22 is required to answer was put in writing?

23 A. It all depends on who the question  
24 is coming from.

25 Q. If it is coming from somebody in

1 J.V. MARTELLA

2 management?

3 A. Whether a manager asks an employee  
4 to write something down in writing or verbally,  
5 it has the same meaning. That would trigger  
6 the employee being made aware of his or her  
7 rights. I don't follow where you are going  
8 here. Whenever there is a reason to believe  
9 that disciplinary action may be taken against  
10 the employee, the employee has a right to have  
11 a union representative present.

12 Q. If at the time that the employee  
13 was asked to write the statement, if at that  
14 time management was thinking of disciplinary  
15 action against the employee, would they be  
16 entitled to Weingarten and Calkin rights?

17 A. Yes.

18 Q. Do you know what CBP table of  
19 offences and penalties means?

20 A. Yes.

21 Q. What are those?

22 A. That is exactly what it says. The  
23 table of offences and the penalty that it  
24 upholds.

25 Q. To your knowledge, is that

1 J.V. MARTELLA

2 something that's applied to probationary  
3 employees?

4 A. Yes. It applies to all employees.

5 Q. To your knowledge, do CBP officers  
6 who are not on duty at the airport ever go  
7 through security there in order to use the  
8 restaurants or shops in the passenger waiting  
9 areas?

10 A. Say that question one more time.

11 MR. OKOLI: Read back the question.

12 (Whereupon, the referred to  
13 question was read back by the Reporter.)

14 A. Depends on what terminal you are  
15 talking about.

16 Q. Do you know of any terminals where  
17 they could go when they are not on duty?

18 A. Terminal B.

19 Q. How do you know that?

20 A. There is no security checkpoint  
21 before the restaurants at terminal B.

22 Q. Are you say saying that somebody  
23 could come from outside and get to the  
24 restaurants in terminal B without going through  
25 security?

1 J.V. MARTELLA

2 A. You don't have to be a ticketed  
3 passenger to go through that area. You don't  
4 have to go through security to go to the  
5 restaurants in terminal B.

6 Q. Do you know what restricted areas  
7 means or secured areas means?

8 MR. CLOPPER: Objection, compound.  
9 Answer to the best of your ability.

10 A. I know what restricted is defined  
11 as so yes, I would say I know what it means.

12 Q. If a customs employee, a customs  
13 officer is not assigned to a duty position say  
14 in an airport, and they go there without  
15 permission, would that place be a restricted  
16 area for them?

17 MR. CLOPPER: Objection, vague an  
18 ambiguous. Answer to the best of your  
19 ability.

20 A. Depends on what part of the  
21 terminal you are going to.

22 Q. Let's say the gate area, the gate  
23 area in front of the jetway. If somebody who  
24 is not assigned there goes to that location  
25 without permission, would that person be going

1 J.V. MARTELLA

2 into a restricted area?

3 A. I assume so, yes.

4 Q. Do you have knowledge of any  
5 customs officers who had gone into restricted  
6 areas at the time they were not supposed to be  
7 there?

8 A. No, I do not.

9 Q. Have you heard of any customs  
10 officers who went to an area they shouldn't be  
11 in at the time they were either off duty or  
12 they didn't have permission to be there?

13 MR. CLOPPER: Objection.

14 A. I don't have any knowledge.

15 Q. Do you know of any CBP officers who  
16 had been terminated solely for going to the  
17 gate area such as the one that Ms. Akinyemi  
18 went to?

19 MR. CLOPPER: Objection, vague and  
20 ambiguous.

21 A. No, I don't.

22 Q. You have been doing union  
23 representation activities for the past how many  
24 years?

25 A. I have been representing bargaining

1 J.V. MARTELLA

2 unit employees for approximately five and a  
3 half years.

4 Q. During this time period, have you  
5 ever seen anyone that was terminated for that  
6 reason?

7 A. I have no knowledge of anyone that  
8 has been terminated for that reason.

9 Q. Based on your representation of Ms.  
10 Akinyemi, is it fair to say you were familiar  
11 with the facts surrounding the incident  
12 involving her on December 5th, 2005?

13 A. I was familiar with the facts that  
14 Ms. Akinyemi stated to me, yes.

15 Q. In your union representational  
16 activities, have you had to represent people  
17 whose conduct was based on what Ms. Akinyemi  
18 told you was what she did, whose conduct was  
19 more egregious than Ms. Akinyemi?

20 MR. CLOPPER: Objection, vague and  
21 ambiguous.

22 A. I don't remember.

23 Q. Do you recall providing an unsworn  
24 statement during the investigation of Ms.  
25 Akinyemi's situation?

1 J.V. MARTELLA

2 A. I do recall speaking with an  
3 investigator, yes.

4 Q. Was there a time that you told the  
5 investigator to send to you in writing  
6 something for your review?

7 A. Yes.

8 Q. Did you review what was sent to  
9 you?

10 A. Yes, I did.

11 Q. Did you sign what was sent to you?

12 A. If my signature is on it, I did.

13 MR. OKOLI: Can we have just a  
14 short break?

15 (Whereupon, a brief recess was  
16 taken.)

17 MR. OKOLI: Mark this, please.

18 (Whereupon, the aforementioned  
19 document was marked as Plaintiff's  
20 Exhibit 3 for identification as of this  
21 date by the Reporter.)

22 Q. I'm showing you what has been  
23 marked as Plaintiff's Exhibit 3. Is that the  
24 unsworn statement which you provided under the  
25 penalty of perjury during the E.E.U.



1 J.V. MARTELLA

2 investigation of Ms. Akinyemi's situation?

3 A. Appears to be a copy of it.

4 Q. Do you recognize the signature on  
5 the last page of the document?

6 A. I do.

7 Q. And whose signature is that?

8 A. It appears to be mine.

9 Q. When you said it appears to be  
10 yours, do you have any reason to believe it is  
11 not yours?

12 A. No.

13 Q. Take a moment and review the  
14 document and I will have a few questions for  
15 you when you are done reviewing. Just look up  
16 to show that you have completed your review.

17 A. Okay.

18 Q. Page 142 of the document, your  
19 answer is written down as "based on my  
20 experience with probationary employees who have  
21 committed more egregious acts and have not been  
22 terminated". Have I read that correctly?

23 A. Yes.

24 Q. Is that true or false that you made  
25 that statement?

1 J.V. MARTELLA

2 A. It is true that I made that  
3 statement?

4 Q. Is the statement itself correct,  
5 that there are other probationary employees,  
6 based on your experience, that have committed  
7 more egregious acts but have not been  
8 terminated?

9 A. This is a document that was signed  
10 on March 13th, 2006, which is when this  
11 statement was made. At the time I could have  
12 had something on my mind that I stated. I am  
13 drawing a blank right now.

14 Q. I am not asking for specific  
15 individuals, you said based on your experience.  
16 Let me put it this way.

17 Is it possible you could have  
18 falsely made this statement?

19 A. I made this statement, yes. It is  
20 a sworn document by me on the statement I made,  
21 yes. We are already there.

22 MR. TALARICO: Objection. It is an  
23 unsworn document.

24 Q. So that's a statement you made?

25 A. Yes.

1 J.V. MARTELLA

2 Q. And at the time that you made this  
3 statement, based on your experience, did you  
4 know of other probationary employees that had  
5 committed more egregious acts that had not been  
6 terminated?

7 A. Did I know --

8 Q. Based on your experience?

9 A. With that question, obviously at  
10 the time I had some thoughts in mind.

11 Q. You knew of some?

12 A. At that time, I must have.

13 Q. Do you have examples of other  
14 conduct that you would considered more  
15 egregious than what was described in Akinyemi's  
16 situation that you had in mind when you made  
17 this statement?

18 A. I don't remember what I was  
19 thinking of at the time that I made that  
20 statement.

21 MR. OKOLI: Thank you.

22 MR. CLOPPER: I will step outside  
23 for a while with my co-counsel and will  
24 be right back.

25 (Whereupon, a brief recess was

1 J.V. MARTELLA

2 taken.)

3 Q. Is there anything in the unsworn  
4 declaration which you have reviewed and which  
5 was marked at today's deposition as Plaintiff's  
6 Exhibit 3 which you find to be incorrect?

7 A. Nothing that I see here is  
8 incorrect.

9 MR. OKOLI: Thank you.

10 MR. CLOPPER: I don't have any  
11 questions.

12 (Whereupon, at 4:21 p.m., the  
13 Examination of this Witness was  
14 concluded.)

15

16

17 \_\_\_\_\_  
JOSEPH VINCENT MARTELLA

18

19 Subscribed and sworn to before me  
20 this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

21

22 \_\_\_\_\_  
NOTARY PUBLIC

23

24

25